



FOR IMMEDIATE RELEASE

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## **STATES' ARGUMENTS FOR EXTENDING MICROSOFT CONSENT DECREE UNFOUNDED**

The Washington Legal Foundation (WLF) today criticized attempts by a handful of state attorneys general to extend the consent decree entered into between the U.S. Department of Justice and Microsoft Corporation in 2002 and urged the presiding judge to reject their demands. The decree is scheduled to expire this November, and federal Judge Colleen Kollar-Kotelly is currently weighing arguments made by parties to the consent decree on whether it has been effective.

The Department of Justice, Microsoft, and a group of states led by New York have filed papers with the court arguing that the consent decree has met its goals, and that Microsoft has been in full compliance with it over the past five years. While not contesting Microsoft's consistent compliance, state attorneys general from several dissenting states, led by California, claim that because Microsoft's operating system market share has not diminished, the consent decree has been unsuccessful and should be extended five years. At a hearing on September 11, Judge Koller-Kotelly seemed unmoved by that argument, stating from the bench that the California group must provide an "identifiable purpose" for extending the decree. She gave the California group until October 15 to submit more arguments, with an opportunity for the other parties to respond.

"No one ever made the argument in the *Microsoft* litigation that the company's market share had been obtained unlawfully, so it's hard to understand the California group's fixation on that as a reason to extend the decree," said Glenn G. Lammi, Chief Counsel of WLF's Legal Studies Division. He added, "the 2002 decree was never intended to strip Microsoft of market share; rather, it was to compel Microsoft to adhere to current antitrust laws and thereby open up the market to allow for greater consumer choice and greater competition. Those goals have been achieved."

Lammi also pointed out the irony in these states seeking an extension of the decree. "They are asking for five more years of a remedy which they opposed as toothless back in 2002. "It may be that the objecting attorneys general see the decree as a legal vehicle for them and Microsoft's competitors to peck away at their competitive advantage through the kind of specious claims we have already seen, like Google's recent attempt to use the decree to force changes to the Vista operating system," Lammi explained. "That would transform the U.S. antitrust laws from protecting competition to protecting competitors, which is not at all in the interests of American consumers."

WLF is confident that once she has reviewed all of the arguments and information put before her, Judge Kollar-Kotelly will adhere to the original timetable and permit the consent decree to expire. "Such a decision would be a positive victory for the rule of law and for American consumers, and send an important message to other nations, who might be feeling

drawn to the type of politicized antitrust policy practiced in jurisdictions like Europe, that neutral principles, applied to protect competition, not competitors, is the best type of competition policy for consumers,” Lammi concluded.

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Washington Legal Foundation, a national, non-profit public interest law and policy center, has opposed government abuse of the legal system for 30 years. WLF’s Litigation Department and Legal Studies Division have played an integral role in explaining the pitfalls of unreasonable government litigation and regulatory enforcement to policy makers and the public. For further information, contact Glenn Lammi at (202) 588-0302.